IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal No. RDB-05-0240
	:	
RANDALL L. WILLIAMS, JR.,	:	
	:	
CHARLES Z. WILLIAMS	:	
	:	

MEMORANDUM OPINION

Now pending before this Court is the motion to suppress of the defendant Charles Z. Williams (Paper No. 14). The Court heard testimony and argument on Williams' motion on July 21, 2005 and July 26, 2005. For the reasons that follow, the Court will by separate Order DENY this motion to suppress.

I. BACKGROUND

From January 25, 2005 to May 11, 2005, agents of the Drug Enforcement Administration ("DEA") and Baltimore County police officers took part in an investigation of narcotics trafficking by the Co-Defendant Randall L. Williams, Jr. ("Randall Williams"). The investigation included controlled purchases of crack cocaine from Randall Williams by a confidential informant ("CI") which were monitored and observed by law enforcement officials of the Joint Task Force on February 22, 2005 and April 19, 2005. On each occasion Randall Williams arrived at the scene of the transaction in a white Chevrolet Corsica.

On May 11, 2005 the CI arranged another controlled purchase of approximately four and one-half ounces of crack cocaine. This amount was substantially larger than the previous purchases from

Randall Williams of approximately one ounce each. Consistent with the earlier controlled purchases, the transaction was scheduled to occur in the late afternoon in the parking lot of the Royal Farms Store on Eastern Avenue in Baltimore City. However, the meeting was postponed by Randall Williams until 7 P.M. that evening. At approximately 6:30 P.M., the law enforcement agents set up surveillance of the Royal Farms parking lot, as the CI arrived at the store and parked. Soon thereafter, the CI spoke with Randall Williams over the telephone and was told he was running late and would not arrive until 7:30 P.M.. The CI relayed this information to the agents at the scene. Additionally, the CI informed the agents that the location of the sale had changed to the Burger King restaurant next door and immediately adjacent to the Royal Farms.

At approximately 7:10 P.M. Randall Williams was observed pulling into the Burger King parking lot in the same white Chevrolet Corsica used in the prior controlled drug transactions. At that point, Randall Williams and a second unidentified male exited from the vehicle. The second black male was later identified to be the defendant Charles Williams, Randall Williams' brother. Agents then entered the Burger King parking lot and observed the two men walking towards the restaurant acting in a nervous manner by turning their heads from side to side in order to scan their surroundings.

Baltimore County Police Officer Randall Carrington ("Carrington"), who was participating in the narcotics investigation of Randall Williams for the first time that day, had been briefed by task force agents earlier as to the particulars of the case. Carrington was situated in close proximity to the Burger King parking lot, and the spot where the suspect's car arrived. He observed two similarly dressed individuals walking towards the entrance to the Burger King. He did not know which of the two individuals was Randall Williams. Officer Carrington also observed the two men looking cautiously at

their surroundings as they crossed the parking lot and entered the Burger King.

Officer Carrington was the first law enforcement official to enter the Burger King. There were approximately ten to fifteen customers in that restaurant when Officer Carrington entered.[1] Upon entry, he observed one of the two men he had previously observed standing in or near the food line. In light of the fact that a drug transaction was expected to take place, and based upon his experience with respect to the possibility of guns being used in connection with drug transactions, Carrington ordered the individual to "get down on the ground," and conducted a patdown search. This individual was, in fact, the defendant Charles Williams, who immediately assumed a face-down prone position on the floor. Carrington approached him, and lifted him off the floor in order to pat him down in a search for weapons. During this patdown, Carrington determined that Charles Williams did not possess a weapon, but Carrington felt a plastic bag containing a large lump that was both hard and soft in Williams' right front pocket. Based upon his years of experience, the feel of the baggie indicated to Carrington that the package contained cocaine.[2] He extracted the baggie from Williams' pocket because he believed that he had found drugs. The object proved to be an approximately four and one-half ounce chunk of crack cocaine wrapped in a plastic bag. In addition to the packaged cocaine, $627.00 was also found in the defendant's pocket and was seized by Carrington. The patdown and

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the removal of the plastic baggie and cash occurred within a matter of seconds.[3] Based upon the cocaine discovered on Charles Williams' person, he was placed under arrest.

Agents more familiar with the case, in particular, DEA Agent-in-Charge Joel Schmidt ("Schmidt"), who came into the Burger King shortly after Carrington, immediately recognized the individual in Carrington's control was not Randall Williams and therefore proceeded to search the Burger King for the suspect. Randall Williams was quickly found and arrested in the bathroom of the Burger King. Agents then searched the vehicle in which the two men had arrived and found approximately three additional ounces of cocaine in the back seat in a camouflage cap and black knit hat.

II. ANALYSIS

The defendant, Charles Z. Williams, moves to suppress the crack cocaine found on his person by Officer Carrington, arguing that the encounter between Officer Carrington and the defendant amounted to a *de facto* arrest without probable cause, and that the contraband discovered as a search incident to that arrest should thereby be suppressed. Alternatively, Williams argues that, even if there was not a *de facto* arrest, the initial stop and patdown conducted by Officer Carrington was not justified by a reasonable articulable suspicion that he was engaged in criminal activity. Lastly, the defendant argues that even if a reasonable articulable suspicion existed to justify a brief stop, the allowable scope of any permissible 'stop and frisk' was exceeded by Officer Carrington once he

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realized the item in the defendant's pocket was not a weapon and posed no threat.

In response, the government contends that the initial stop of Charles Williams by Officer Carrington was not a *de facto* arrest, but rather a stop permitted under the doctrine of *Terry v. Ohio*, 392 U.S. 1 (1968), based upon a reasonable articulable suspicion that Charles Williams was armed and involved in criminal activity. Furthermore, the government contends that Carrington was justified in seizing the object from Charles Williams' pocket under the "plain feel" doctrine set forth in *Minnesota v. Dickerson*, 508 U.S. 366, 375-76 (1993), because during the patdown Carrington could feel by the contour of the plastic bag that it was a plastic baggie containing crack cocaine.[4]

A. De Facto Arrest

The government does not contend that the search of the defendant, Charles Williams, was a search incident to an arrest. *Illinois v. Gates*, 462 U.S. 213 (1983). The government does contend that the search was within the parameters of the "plain feel" doctrine of *Minnesota v. Dickerson*,

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[4]The government has alternatively argued that even if the patdown search and discovery of the cocaine package was not permissible under *Terry v. Ohio* and *Minnesota v. Dickerson* the doctrine of inevitable discovery would still apply. Under the "inevitable discovery" doctrine, improperly seized evidence may nevertheless be admitted "[i]f the prosecution can establish by a preponderance of the evidence that the information ultimately would have been discovered by lawful means." *Nix v. Williams*, 467 U.S. 431, 444 (1984). The government contends that there was clear probable cause to arrest Randall Williams and the search of the vehicle incident to *his* arrest did reveal crack cocaine. The government argues that under principles set forth in *Maryland v. Pringle*, 540 U.S. 366, 372 (2003), the cocaine found in the car would provide probable cause for the immediate arrest of all occupants of the car. Thus, the government contends that there would still have been a lawful search of Charles Williams incident to this lawful arrest. As the facts of this case are distinguishable from the facts in *Maryland v. Pringle*, this Court questions the government's expansive interpretation of that case. However, in light of this Court's ruling on the validity of a *Terry v. Ohio* stop and the "plain feel" doctrine of *Minnesota v. Dickerson*, this Court need not address the alternative "inevitable discovery" theory.

incident to a patdown search under the doctrine of *Terry v. Ohio*. However, the defendant contends that his encounter with Officer Carrington amounted to an immediate *de facto* arrest. In support of this argument, the defendant points to several facts. Specifically, he focuses on testimony of Officer Carrington and Special Agent Schmidt of the DEA that it was their intention to arrest Randall Williams in the Burger King. The defendant places great emphasis on the fact that Officer Carrington was unaware of the identity of the suspect he was approaching inside the Burger King, and therefore suggests that Carrington must have inadvertently actualized an intent to arrest Randall Williams upon Charles Williams. The defendant further points to the factual discrepancies between Agent Schmidt's subsequent affidavit, his completion of a DEA-6 form, Officer Carrington's testimony, the alleged loud voice used by Carrington to notify the defendant to "get down on the ground," and alleges disputed fact as to when the handcuffs were applied to him.

First, the defense places great emphasis on discrepancies in the record between Agent Schmidt's affidavit, DEA-6 reports, and Officer Carrington's testimony. Specifically, Agent Schmidt in his report classified Carrington's search of the defendant, Charles Williams, as a search incident to arrest, instead of a patdown search under *Terry v. Ohio*. However, as the defense acknowledges in its supplemental memorandum in support of the motion to suppress, "Special Agent Schmidt testified that he paid little attention to Detective Carrington and his interactions with the unidentified individual." (*See* Defendant's Supplemental Memorandum of Law in Support of the Motion to Suppress P.5.) Further, Detective Carrington testified that he had no conversation with Agent Schmidt at the Burger King on May 11, 2005 and, when the two spoke the next day, they did not specifically discuss whether Officer Carrington's contraband discovery was the result of a search incident to arrest or a search justified

under *Terry v. Ohio*. Therefore, crediting Officer Carrington's testimony, this Court is convinced Agent Schmidt's subsequent classification of the encounter and contraband discovery as a search incident to arrest, instead of a *Terry* 'stop and frisk,' was nothing more than harmless clerical error.

Second, this Court finds that while it was the agents' intent to arrest Randall Williams once inside the Burger King, there is no evidence that it was Officer Carrington's intent to arrest the individual standing in line (and, later determined to be Charles Williams) upon entering the Burger King. Officer Carrington testified at the motion hearing that it was not his intention to arrest the unidentified individual once inside the Burger King. Further, given he was new to the investigation, as the first officer in the restaurant he was unaware which of the two individuals he saw exiting the vehicle and entering the establishment was Randall Williams. Thus, he testified, and the Court finds, that it was not his intent to arrest the individual in line, but rather to gain control over a potentially dangerous situation with members of the public in close proximity.

Additionally, any intent to arrest on Carrington's part by itself would not escalate the encounter to a level of 'unreasonableness' prohibited by the Fourth Amendment. In fact, Officer Carrington's subjective intent or state of mind upon entering the Burger King is not at issue. *Whren v. United States*, 517 U.S. 806, 812-13 (1996). As the Supreme Court recently pointed out in *Devenpeck v. Alford*, __ U.S. __, 125 S. Ct. 588, 594 (2004):

> [A]s we have repeatedly explained, "the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action." *Whren*, 517 U.S. at 813 (quoting *Scott v. United States*, 436 U.S. 128, 138, 56 L. Ed. 2d 168, 98 S. Ct. 1717 (1978)). "[T]he Fourth Amendment's concern with 'reasonableness' allows certain actions to be taken in certain circumstances,

> whatever the subjective intent." *Whren* at 814. "[E]venhanded law enforcement is best achieved by the application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer." *Horton v. California*, 496 U.S. 128, 138, 110 L. Ed. 2d 112, 110 S. Ct. 2301 (1990).

Therefore, the Court's only inquiry in this regard need be an evaluation of the factual circumstances surrounding the encounter, and a determination of objective reasonableness. Specifically, the Court need only evaluate whether the officer's actions were justified by a reasonable articulable suspicion, and reasonably related in scope to the circumstances justifying the intrusion. *Terry*, 392 U.S. at 20.

B. The Initial Pat-down

If, under the totality of the circumstances, a police officer has a reasonable articulable suspicion that a person is armed and involved in criminal activity, that officer may conduct a patdown search of that individual without a warrant in order to quell any threat of physical harm. *United States v. Jones*, 303 F. Supp. 2d 702, 704-705 (D. Md. 2004) (citing *United States v. Raymond*, 152 F.3d 309, 312 (4th Cir. 1998)). Thus, the question before this Court is whether or not Officer Carrington, who carried out the investigative stop, had a reasonable articulable suspicion that Charles Williams was armed and involved in criminal activity.

Defendants' reliance on *United States v. Di Re*, 332 U.S. 581 (1948) and *Ybarra v. Illinois*, 444 U.S. 85 (1979) to show a lack of reasonable articulable suspicion is misplaced. First, *Di Re* addressed the issue of probable cause, and was decided some twenty years before *Terry v. Ohio* and the birth of reasonable articulable suspicion. The government did not argue that Officer Carrington's actions were justified under a theory of probable cause, but rather reasonable articulable suspicion (a

lower standard). Furthermore, *Di Re* is distinguishable on its facts. Second, the Supreme Court in *Ybarra* found the search of a bar patron present during the execution of a search warrant unlawful because the *initial* patdown was "unsupported by a reasonable belief that the suspect was armed and presently dangerous." *Id.* at 92-93. The warrantless search of a bar patron is clearly distinguishable from the search of an individual arriving at the scene of a monitored drug transaction involving a confidential informant.

Officer Carrington was justified in initiating the patdown of the defendant in this instance. Carrington knew that a task force with which he was working was conducting a planned controlled purchase of crack cocaine by a confidential informant from Randall Williams, that the controlled purchase was to take place in the Burger King at which the police were waiting, and that Randall Williams had sold the confidential informant crack cocaine on several prior occasions. Additionally, unlike the prior drug deals, the deal set to take place on May 11, 2005 was not for the previous amount of one ounce, but rather the substantially larger amount of four and one-half ounces. Further, although Carrington was not familiar with the identity of Randall Williams, he was alerted to the arrival of his car at the Burger King. At that point, Carrington observed two individuals exit that vehicle, similarly dressed, walking apprehensively across the parking lot and into the Burger King. In the training and experience he garnered from conducting such operations, Carrington knew that drug dealers often carry weapons and travel in pairs, as a means of enforcement and protection. Thus, as the first officer inside the Burger King, Carrington's instinctive response to briefly detain and patdown the suspect in order to ensure both the protection of the general public inside and the officers entering behind him was

unequivocally justified by a reasonable articulable suspicion that Charles Williams was armed.[5] Officer Carrington in making an investigative stop is permitted to take such steps as are "reasonably necessary to protect [his] personal safety and to maintain the status quo during the course of the stop." *United States v. Hensley*, 469 U.S. 221, 235 (1985).

Having concluded that Carrington's initial stop of Charles Williams was justified under *Terry v. Ohio* as an investigative stop, the next inquiry is whether it was reasonably related in its scope to the circumstances justifying the intrusion. *Terry*, 392 U.S. at 20. As noted above, Carrington's actions were reasonably related to the circumstances justifying the intrusion, specifically the protection of members of the public, himself, and other police officers. The alleged use of the loud voice by Officer Carrington was uncorroborated by anyone other than the defendant himself. Both witnesses from the

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[5]The defendant argues the "collective knowledge" doctrine in order to charge Officer Carrington with the level of knowledge of agents more familiar with the case, *i.e.*, those who recognized Randall Williams. The defendant thereby suggests that Carrington should have somehow ignored Charles Williams's presence in the Burger King amidst a potentially dangerous encounter in a public restaurant. This argument is misplaced.

The "collective knowledge" doctrine, as used in the cases cited by the defendant, imputes the knowledge of officers knowing the facts and history of a case which justify a 'search' to the officers actually conducting the search, in order to fend off any subsequent attack on the search's validity as being without probable cause. *See United States v. Hagerman*, 2003 U.S. Dist. LEXIS 9051 (W.D. Va. March 26, 2003); *United States v. Laughman*, 618 F.2d 1067 (4th Cir. 1980). The 'collective knowledge' doctrine protects an otherwise valid arrest from attack because of a lack of firsthand knowledge of the particular facts justifying the search on the part of the officers actually conducting that search. Furthermore, *Whiteley v. Warden*, 401 U.S. 560 (1971), a case briefed at length by the defense, is a case concerning reliance on a search warrant unsupported by probable cause, and an issuing officer's attempt to remove the taint of the warrant by giving it to an unknowing field officer. In the instant case, Agent Schmidt was not attempting to have Officer Carrington search Charles Williams. Rather, Officer Carrington, as the first one in the restaurant and acting on the facts known to him at the time, had independent objective cause to briefly detain the defendant. *See* discussion *supra*; *see* also *Whren*, 517 U.S. at 813.

Burger King testified under oath as to the quiet and polite conduct of the police officers at the scene. Further, a loud voice, under the circumstances, was justifiable.

Witness testimony at the motion hearing did not establish that the handcuffs were applied before Williams' arrest. Officer Carrington and the defendant, Charles Williams, both testified that the handcuffs were placed on the defendant after the patdown search and the removal of cocaine from the defendant's pocket. However, were that not the case, such restraint would not have automatically elevated the detention into an arrest. *United States v. Crittendon*, 883 F.2d 326, 329 (4th Cir. 1989)("Brief, even if complete, deprivations of a suspect's liberty do not convert a stop and frisk into an arrest so long as the methods of restraint used are reasonable to the circumstances.").

Finally, it should be noted that the entire sequence of events with respect to Charles Williams' brief detention and eventual arrest lasted a matter of seconds. The defendant, Charles Williams, testified that the entire sequence took approximately ten to twelve seconds. A court assessing the duration of a stop "should take care to consider whether the police are acting in a swiftly developing situation, and in such cases the court should not indulge in unrealistic second-guessing." *United States v. Sharpe*, 470 U.S. 675, 686 (1985). Thus, this Court finds Officer Carrington's actions were reasonably related in scope to the circumstances justifying the initial stop. Carrington was clearly justified in conducting the patdown search at the scene of a monitored drug transaction involving a confidential informant.

C. The Removal of the Object

Given Carrington's justification under *Terry* and progeny to conduct a brief investigatory stop

based upon reasonable articulable suspicion, he was also entitled "to conduct a limited search of [Charles Williams's] outer clothing to discover any weapons." *Raymond*, 152 F.3d at 312. If, in the course of that patdown for weapons, Officer Carrington discovered contraband through "plain feel" whose "contour or mass [made] its identity immediately apparent," then he was justified in seizing that item, provided he had probable cause to believe the item was contraband by the time he realized it was not a weapon. *Dickerson*, 508 U.S. at 375-76, 378-79; *United States v. Swann*, 149 F.3d 271, 275 n. 3 (4th Cir. 1998). However, if the contraband was discovered only after "squeezing, sliding, and otherwise manipulating the contents of [Charles Williams'] pocket," Carrington's seizure of the contraband was had in contravention of Williams' Fourth Amendment rights, and should be suppressed. *Dickerson*, 508 U.S. at 378. The distinction between the two is, admittedly, "exceedingly fine." *United States v. Ramirez*, 2003 U.S. Dist. LEXIS 1669, at *22 (S.D.N.Y. Jan. 30, 2003).

In the case at bar, Officer Carrington testified that while in the process of a patdown for weapons he felt a plastic bag in Charles Williams' front shorts pocket, containing a chunky substance with both hard and soft qualities. Further, he testified that based upon his numerous experiences as an officer arresting persons secreting narcotics, he was "pretty comfortable" that the suspect in this instance was carrying cocaine within the plastic bag. However, Officer Carrington further testified that it took him "more than a couple of seconds" to conclude the substance was drugs. The defendant contends this last point puts the case squarely within the bounds of *Minnesota v. Dickerson*. This Court disagrees.

"No doubt a metaphysician could draw distinctions between "immediately" knowing something,

[and] knowing it after a [couple of seconds]." *Ramirez,* 2003 U.S. Dist. LEXIS at *24. However, this Court need not diverge into metaphysics to decide the issue before it. On the contrary, after determining whether the object's "incriminating character [was] immediately apparent," *Dickerson*, 508 U.S. at 375, this Court need only inquire whether or not Officer Carrington had probable cause to believe the object was contraband by the time he realized it was not a weapon. *Jones*, 303 F. Supp. 2d at 706.

The Court concludes the object's incriminating character was immediately apparent to Officer Carrington during the patdown. Based upon prior experiences arresting suspects who secreted drugs in various containers upon their person, coming across a plastic bag holding a loose "hard and soft" substance inside would, and did immediately indicate to Carrington the incriminating character of the item in this instance. That is not to say Carrington was 100% sure it was "cocaine" at that very moment, but absolute certainty was not required. *Jones*, 303 F. Supp. 2d at 706.

Additionally, this Court finds at that same moment under the totality of the circum-stances, Officer Carrington had probable cause to believe the item was contraband. Officer Carrington is a veteran officer with substantial knowledge of the drug trade. He has been a member of the police force for nearly seventeen years, attended a six month narcotics program and an advanced narcotics school for additional training, participates in over fifty drug investigations each year, and was assigned to DEA Task Force 51 in this instance to help with the drug investigation at the Burger King. Further, Officer Carrington observed the defendant in this instance walking furtively out of the suspect vehicle and into the Burger King where the monitored drug transaction was to take place. At the time of the stop,

Carrington was unsure if the person he was frisking was, in fact, Randall Williams. Additionally, as he testified, Carrington was aware that drug dealers often work in pairs. Lastly, "the object's shape, size, and packaging were consistent with a lump of crack-cocaine or another controlled dangerous substance." *Jones*, 303 F. Supp. 2d at 706. Thus, under the totality of the circumstances, the moment he recognized the item's incriminating character and was "pretty comfortable" it was narcotics is the same moment in this Court's view that Carrington had probable cause to believe the item was contraband. Probable cause "merely requires that the facts available to the officer would warrant a man of reasonable caution in the belief that certain items may be contraband." *Texas v. Brown*, 460 U.S. 730, 742 (1983) (plurality opnion). As such, his subsequent removal and seizure of the item was justified under the "plain feel" doctrine of *Minnesota v. Dickerson*.

In light of this Court's conclusion that Carrington had probable cause to seize the item the same moment he recognized its incriminating character, it becomes immaterial whether he took "more than a couple of seconds" (or ten to twelve seconds as the defendant testified) to increase his confidence that the baggie contained contraband. For such action was merely a means to further verify in the brief span of a couple of seconds "what he understood from the first." *Ramirez*, 203 U.S. Dist. LEXIS at *24, namely, that the item in Charles Williams' pocket was very likely cocaine. However, assuming *arguendo* that this Court found probable cause to be lacking at that initial moment, relevant case law interpreting *Minnesota v. Dickerson* further supports a finding of reasonableness in this instance, despite the passing of a few seconds. *Raymond*, 152 F.3d at 313 (patdown search took "five seconds"); *Ramirez*, 2003 U.S. Dist. LEXIS at *24 (squeezed and rolled item "for a second or so"); *United States v. Rogers*, 129 F.3d 76 (1997) (manipulated item for a "few seconds"). Carrington

conducted an appropriate patdown search in light of the totality of the circumstances. He had probable cause to believe that the object he felt was a package of cocaine. Accordingly, the seizure was lawful.

III. CONCLUSION

For the reasons stated herein, the motion of the Defendant, Charles Williams, to suppress the evidence seized from his person on May 11, 2005 is DENIED.

Date: August 9, 2005

/s/
Richard D. Bennett
United States District Judge

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First, the defense places great emphasis on discrepancies in the record between Agent Schmidt's affidavit, DEA-6 reports, and Officer Carrington's testimony. Specifically, Agent Schmidt in his report classified Carrington's search of the defendant, Charles Williams, as a search incident to arrest, instead of a patdown search under *Terry v. Ohio*. However, as the defense acknowledges in its supplemental memorandum in support of the motion to suppress, "Special Agent Schmidt testified that he paid little attention to Detective Carrington and his interactions with the unidentified individual." (*See* Defendant's Supplemental Memorandum of Law in Support of the Motion to Suppress P.5.) Further, Detective Carrington testified that he had no conversation with Agent Schmidt at the Burger King on May 11, 2005 and, when the two spoke the next day, they did not specifically discuss whether Officer Carrington's contraband discovery was the result of a search incident to arrest or a search justified

under *Terry v. Ohio*. Therefore, crediting Officer Carrington's testimony, this Court is convinced Agent Schmidt's subsequent classification of the encounter and contraband discovery as a search incident to arrest, instead of a *Terry* 'stop and frisk,' was nothing more than harmless clerical error.

Second, this Court finds that while it was the agents' intent to arrest Randall Williams once inside the Burger King, there is no evidence that it was Officer Carrington's intent to arrest the individual standing in line (and, later determined to be Charles Williams) upon entering the Burger King. Officer Carrington testified at the motion hearing that it was not his intention to arrest the unidentified individual once inside the Burger King. Further, given he was new to the investigation, as the first officer in the restaurant he was unaware which of the two individuals he saw exiting the vehicle and entering the establishment was Randall Williams. Thus, he testified, and the Court finds, that it was not his intent to arrest the individual in line, but rather to gain control over a potentially dangerous situation with members of the public in close proximity.

Additionally, any intent to arrest on Carrington's part by itself would not escalate the encounter to a level of 'unreasonableness' prohibited by the Fourth Amendment. In fact, Officer Carrington's subjective intent or state of mind upon entering the Burger King is not at issue. *Whren v. United States*, 517 U.S. 806, 812-13 (1996). As the Supreme Court recently pointed out in *Devenpeck v. Alford*, __ U.S. __, 125 S. Ct. 588, 594 (2004):

> [A]s we have repeatedly explained, "the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action." *Whren*, 517 U.S. at 813 (quoting *Scott v. United States*, 436 U.S. 128, 138, 56 L. Ed. 2d 168, 98 S. Ct. 1717 (1978)). "[T]he Fourth Amendment's concern with 'reasonableness' allows certain actions to be taken in certain circumstances,

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Therefore, the Court's only inquiry in this regard need be an evaluation of the factual circumstances surrounding the encounter, and a determination of objective reasonableness. Specifically, the Court need only evaluate whether the officer's actions were justified by a reasonable articulable suspicion, and reasonably related in scope to the circumstances justifying the intrusion. *Terry*, 392 U.S. at 20.

B. The Initial Pat-down

If, under the totality of the circumstances, a police officer has a reasonable articulable suspicion that a person is armed and involved in criminal activity, that officer may conduct a patdown search of that individual without a warrant in order to quell any threat of physical harm. *United States v. Jones*, 303 F. Supp. 2d 702, 704-705 (D. Md. 2004) (citing *United States v. Raymond*, 152 F.3d 309, 312 (4th Cir. 1998)). Thus, the question before this Court is whether or not Officer Carrington, who carried out the investigative stop, had a reasonable articulable suspicion that Charles Williams was armed and involved in criminal activity.

Defendants' reliance on *United States v. Di Re*, 332 U.S. 581 (1948) and *Ybarra v. Illinois*, 444 U.S. 85 (1979) to show a lack of reasonable articulable suspicion is misplaced. First, *Di Re* addressed the issue of probable cause, and was decided some twenty years before *Terry v. Ohio* and the birth of reasonable articulable suspicion. The government did not argue that Officer Carrington's actions were justified under a theory of probable cause, but rather reasonable articulable suspicion (a

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Officer Carrington was justified in initiating the patdown of the defendant in this instance. Carrington knew that a task force with which he was working was conducting a planned controlled purchase of crack cocaine by a confidential informant from Randall Williams, that the controlled purchase was to take place in the Burger King at which the police were waiting, and that Randall Williams had sold the confidential informant crack cocaine on several prior occasions. Additionally, unlike the prior drug deals, the deal set to take place on May 11, 2005 was not for the previous amount of one ounce, but rather the substantially larger amount of four and one-half ounces. Further, although Carrington was not familiar with the identity of Randall Williams, he was alerted to the arrival of his car at the Burger King. At that point, Carrington observed two individuals exit that vehicle, similarly dressed, walking apprehensively across the parking lot and into the Burger King. In the training and experience he garnered from conducting such operations, Carrington knew that drug dealers often carry weapons and travel in pairs, as a means of enforcement and protection. Thus, as the first officer inside the Burger King, Carrington's instinctive response to briefly detain and patdown the suspect in order to ensure both the protection of the general public inside and the officers entering behind him was

unequivocally justified by a reasonable articulable suspicion that Charles Williams was armed.[5] Officer Carrington in making an investigative stop is permitted to take such steps as are "reasonably necessary to protect [his] personal safety and to maintain the status quo during the course of the stop." *United States v. Hensley*, 469 U.S. 221, 235 (1985).

Having concluded that Carrington's initial stop of Charles Williams was justified under *Terry v. Ohio* as an investigative stop, the next inquiry is whether it was reasonably related in its scope to the circumstances justifying the intrusion. *Terry*, 392 U.S. at 20. As noted above, Carrington's actions were reasonably related to the circumstances justifying the intrusion, specifically the protection of members of the public, himself, and other police officers. The alleged use of the loud voice by Officer Carrington was uncorroborated by anyone other than the defendant himself. Both witnesses from the

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[5]The defendant argues the "collective knowledge" doctrine in order to charge Officer Carrington with the level of knowledge of agents more familiar with the case, *i.e.*, those who recognized Randall Williams. The defendant thereby suggests that Carrington should have somehow ignored Charles Williams's presence in the Burger King amidst a potentially dangerous encounter in a public restaurant. This argument is misplaced.

The "collective knowledge" doctrine, as used in the cases cited by the defendant, imputes the knowledge of officers knowing the facts and history of a case which justify a 'search' to the officers actually conducting the search, in order to fend off any subsequent attack on the search's validity as being without probable cause. *See United States v. Hagerman*, 2003 U.S. Dist. LEXIS 9051 (W.D. Va. March 26, 2003); *United States v. Laughman*, 618 F.2d 1067 (4th Cir. 1980). The 'collective knowledge' doctrine protects an otherwise valid arrest from attack because of a lack of firsthand knowledge of the particular facts justifying the search on the part of the officers actually conducting that search. Furthermore, *Whiteley v. Warden*, 401 U.S. 560 (1971), a case briefed at length by the defense, is a case concerning reliance on a search warrant unsupported by probable cause, and an issuing officer's attempt to remove the taint of the warrant by giving it to an unknowing field officer. In the instant case, Agent Schmidt was not attempting to have Officer Carrington search Charles Williams. Rather, Officer Carrington, as the first one in the restaurant and acting on the facts known to him at the time, had independent objective cause to briefly detain the defendant. *See* discussion *supra*; *see* also *Whren*, 517 U.S. at 813.

Burger King testified under oath as to the quiet and polite conduct of the police officers at the scene. Further, a loud voice, under the circumstances, was justifiable.

Witness testimony at the motion hearing did not establish that the handcuffs were applied before Williams' arrest. Officer Carrington and the defendant, Charles Williams, both testified that the handcuffs were placed on the defendant after the patdown search and the removal of cocaine from the defendant's pocket. However, were that not the case, such restraint would not have automatically elevated the detention into an arrest. *United States v. Crittendon*, 883 F.2d 326, 329 (4th Cir. 1989)("Brief, even if complete, deprivations of a suspect's liberty do not convert a stop and frisk into an arrest so long as the methods of restraint used are reasonable to the circumstances.").

Finally, it should be noted that the entire sequence of events with respect to Charles Williams' brief detention and eventual arrest lasted a matter of seconds. The defendant, Charles Williams, testified that the entire sequence took approximately ten to twelve seconds. A court assessing the duration of a stop "should take care to consider whether the police are acting in a swiftly developing situation, and in such cases the court should not indulge in unrealistic second-guessing." *United States v. Sharpe*, 470 U.S. 675, 686 (1985). Thus, this Court finds Officer Carrington's actions were reasonably related in scope to the circumstances justifying the initial stop. Carrington was clearly justified in conducting the patdown search at the scene of a monitored drug transaction involving a confidential informant.

C. The Removal of the Object

Given Carrington's justification under *Terry* and progeny to conduct a brief investigatory stop

based upon reasonable articulable suspicion, he was also entitled "to conduct a limited search of [Charles Williams's] outer clothing to discover any weapons." *Raymond*, 152 F.3d at 312. If, in the course of that patdown for weapons, Officer Carrington discovered contraband through "plain feel" whose "contour or mass [made] its identity immediately apparent," then he was justified in seizing that item, provided he had probable cause to believe the item was contraband by the time he realized it was not a weapon. *Dickerson*, 508 U.S. at 375-76, 378-79; *United States v. Swann*, 149 F.3d 271, 275 n. 3 (4th Cir. 1998). However, if the contraband was discovered only after "squeezing, sliding, and otherwise manipulating the contents of [Charles Williams'] pocket," Carrington's seizure of the contraband was had in contravention of Williams' Fourth Amendment rights, and should be suppressed. *Dickerson*, 508 U.S. at 378. The distinction between the two is, admittedly, "exceedingly fine." *United States v. Ramirez*, 2003 U.S. Dist. LEXIS 1669, at *22 (S.D.N.Y. Jan. 30, 2003).

In the case at bar, Officer Carrington testified that while in the process of a patdown for weapons he felt a plastic bag in Charles Williams' front shorts pocket, containing a chunky substance with both hard and soft qualities. Further, he testified that based upon his numerous experiences as an officer arresting persons secreting narcotics, he was "pretty comfortable" that the suspect in this instance was carrying cocaine within the plastic bag. However, Officer Carrington further testified that it took him "more than a couple of seconds" to conclude the substance was drugs. The defendant contends this last point puts the case squarely within the bounds of *Minnesota v. Dickerson*. This Court disagrees.

"No doubt a metaphysician could draw distinctions between "immediately" knowing something,

[and] knowing it after a [couple of seconds]." *Ramirez,* 2003 U.S. Dist. LEXIS at *24. However, this Court need not diverge into metaphysics to decide the issue before it. On the contrary, after determining whether the object's "incriminating character [was] immediately apparent," *Dickerson*, 508 U.S. at 375, this Court need only inquire whether or not Officer Carrington had probable cause to believe the object was contraband by the time he realized it was not a weapon. *Jones*, 303 F. Supp. 2d at 706.

The Court concludes the object's incriminating character was immediately apparent to Officer Carrington during the patdown. Based upon prior experiences arresting suspects who secreted drugs in various containers upon their person, coming across a plastic bag holding a loose "hard and soft" substance inside would, and did immediately indicate to Carrington the incriminating character of the item in this instance. That is not to say Carrington was 100% sure it was "cocaine" at that very moment, but absolute certainty was not required. *Jones*, 303 F. Supp. 2d at 706.

Additionally, this Court finds at that same moment under the totality of the circum-stances, Officer Carrington had probable cause to believe the item was contraband. Officer Carrington is a veteran officer with substantial knowledge of the drug trade. He has been a member of the police force for nearly seventeen years, attended a six month narcotics program and an advanced narcotics school for additional training, participates in over fifty drug investigations each year, and was assigned to DEA Task Force 51 in this instance to help with the drug investigation at the Burger King. Further, Officer Carrington observed the defendant in this instance walking furtively out of the suspect vehicle and into the Burger King where the monitored drug transaction was to take place. At the time of the stop,

Carrington was unsure if the person he was frisking was, in fact, Randall Williams. Additionally, as he testified, Carrington was aware that drug dealers often work in pairs. Lastly, "the object's shape, size, and packaging were consistent with a lump of crack-cocaine or another controlled dangerous substance." *Jones*, 303 F. Supp. 2d at 706. Thus, under the totality of the circumstances, the moment he recognized the item's incriminating character and was "pretty comfortable" it was narcotics is the same moment in this Court's view that Carrington had probable cause to believe the item was contraband. Probable cause "merely requires that the facts available to the officer would warrant a man of reasonable caution in the belief that certain items may be contraband." *Texas v. Brown*, 460 U.S. 730, 742 (1983) (plurality opnion). As such, his subsequent removal and seizure of the item was justified under the "plain feel" doctrine of *Minnesota v. Dickerson*.

In light of this Court's conclusion that Carrington had probable cause to seize the item the same moment he recognized its incriminating character, it becomes immaterial whether he took "more than a couple of seconds" (or ten to twelve seconds as the defendant testified) to increase his confidence that the baggie contained contraband. For such action was merely a means to further verify in the brief span of a couple of seconds "what he understood from the first." *Ramirez*, 203 U.S. Dist. LEXIS at *24, namely, that the item in Charles Williams' pocket was very likely cocaine. However, assuming *arguendo* that this Court found probable cause to be lacking at that initial moment, relevant case law interpreting *Minnesota v. Dickerson* further supports a finding of reasonableness in this instance, despite the passing of a few seconds. *Raymond*, 152 F.3d at 313 (patdown search took "five seconds"); *Ramirez*, 2003 U.S. Dist. LEXIS at *24 (squeezed and rolled item "for a second or so"); *United States v. Rogers*, 129 F.3d 76 (1997) (manipulated item for a "few seconds"). Carrington

conducted an appropriate patdown search in light of the totality of the circumstances. He had probable cause to believe that the object he felt was a package of cocaine. Accordingly, the seizure was lawful.

III. CONCLUSION

For the reasons stated herein, the motion of the Defendant, Charles Williams, to suppress the evidence seized from his person on May 11, 2005 is DENIED.

Date: August 9, 2005

/s/
Richard D. Bennett
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal No. RDB-05-0240
	:	
RANDALL L. WILLIAMS, JR.,	:	
	:	
CHARLES Z. WILLIAMS	:	
	:	

MEMORANDUM OPINION

Now pending before this Court is the motion to suppress of the defendant Charles Z. Williams (Paper No. 14). The Court heard testimony and argument on Williams' motion on July 21, 2005 and July 26, 2005. For the reasons that follow, the Court will by separate Order DENY this motion to suppress.

I. BACKGROUND

From January 25, 2005 to May 11, 2005, agents of the Drug Enforcement Administration ("DEA") and Baltimore County police officers took part in an investigation of narcotics trafficking by the Co-Defendant Randall L. Williams, Jr. ("Randall Williams"). The investigation included controlled purchases of crack cocaine from Randall Williams by a confidential informant ("CI") which were monitored and observed by law enforcement officials of the Joint Task Force on February 22, 2005 and April 19, 2005. On each occasion Randall Williams arrived at the scene of the transaction in a white Chevrolet Corsica.

On May 11, 2005 the CI arranged another controlled purchase of approximately four and one-half ounces of crack cocaine. This amount was substantially larger than the previous purchases from

Randall Williams of approximately one ounce each. Consistent with the earlier controlled purchases, the transaction was scheduled to occur in the late afternoon in the parking lot of the Royal Farms Store on Eastern Avenue in Baltimore City. However, the meeting was postponed by Randall Williams until 7 P.M. that evening. At approximately 6:30 P.M., the law enforcement agents set up surveillance of the Royal Farms parking lot, as the CI arrived at the store and parked. Soon thereafter, the CI spoke with Randall Williams over the telephone and was told he was running late and would not arrive until 7:30 P.M.. The CI relayed this information to the agents at the scene. Additionally, the CI informed the agents that the location of the sale had changed to the Burger King restaurant next door and immediately adjacent to the Royal Farms.

At approximately 7:10 P.M. Randall Williams was observed pulling into the Burger King parking lot in the same white Chevrolet Corsica used in the prior controlled drug transactions. At that point, Randall Williams and a second unidentified male exited from the vehicle. The second black male was later identified to be the defendant Charles Williams, Randall Williams' brother. Agents then entered the Burger King parking lot and observed the two men walking towards the restaurant acting in a nervous manner by turning their heads from side to side in order to scan their surroundings.

Baltimore County Police Officer Randall Carrington ("Carrington"), who was participating in the narcotics investigation of Randall Williams for the first time that day, had been briefed by task force agents earlier as to the particulars of the case. Carrington was situated in close proximity to the Burger King parking lot, and the spot where the suspect's car arrived. He observed two similarly dressed individuals walking towards the entrance to the Burger King. He did not know which of the two individuals was Randall Williams. Officer Carrington also observed the two men looking cautiously at

their surroundings as they crossed the parking lot and entered the Burger King.

Officer Carrington was the first law enforcement official to enter the Burger King. There were approximately ten to fifteen customers in that restaurant when Officer Carrington entered.[1] Upon entry, he observed one of the two men he had previously observed standing in or near the food line. In light of the fact that a drug transaction was expected to take place, and based upon his experience with respect to the possibility of guns being used in connection with drug transactions, Carrington ordered the individual to "get down on the ground," and conducted a patdown search. This individual was, in fact, the defendant Charles Williams, who immediately assumed a face-down prone position on the floor. Carrington approached him, and lifted him off the floor in order to pat him down in a search for weapons. During this patdown, Carrington determined that Charles Williams did not possess a weapon, but Carrington felt a plastic bag containing a large lump that was both hard and soft in Williams' right front pocket. Based upon his years of experience, the feel of the baggie indicated to Carrington that the package contained cocaine.[2] He extracted the baggie from Williams' pocket because he believed that he had found drugs. The object proved to be an approximately four and one-half ounce chunk of crack cocaine wrapped in a plastic bag. In addition to the packaged cocaine, $627.00 was also found in the defendant's pocket and was seized by Carrington. The patdown and

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[1]Burger King employee Anthony Graves testified at the suppression hearing that there were ten to fifteen customers in the restaurant. A second Burger King employee Gwendis Phillips testified that there were approximately ten customers standing in line and perhaps an additional nine customers sitting down.

[2]Officer Carrington provided testimony of his experience with the packaging of cocaine and his experience in prior cocaine related arrests.

the removal of the plastic baggie and cash occurred within a matter of seconds.[3] Based upon the cocaine discovered on Charles Williams' person, he was placed under arrest.

Agents more familiar with the case, in particular, DEA Agent-in-Charge Joel Schmidt ("Schmidt"), who came into the Burger King shortly after Carrington, immediately recognized the individual in Carrington's control was not Randall Williams and therefore proceeded to search the Burger King for the suspect. Randall Williams was quickly found and arrested in the bathroom of the Burger King. Agents then searched the vehicle in which the two men had arrived and found approximately three additional ounces of cocaine in the back seat in a camouflage cap and black knit hat.

II. ANALYSIS

The defendant, Charles Z. Williams, moves to suppress the crack cocaine found on his person by Officer Carrington, arguing that the encounter between Officer Carrington and the defendant amounted to a *de facto* arrest without probable cause, and that the contraband discovered as a search incident to that arrest should thereby be suppressed. Alternatively, Williams argues that, even if there was not a *de facto* arrest, the initial stop and patdown conducted by Officer Carrington was not justified by a reasonable articulable suspicion that he was engaged in criminal activity. Lastly, the defendant argues that even if a reasonable articulable suspicion existed to justify a brief stop, the allowable scope of any permissible 'stop and frisk' was exceeded by Officer Carrington once he

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[3]The Burger King employee Gwendis Phillips testified that "everything happened quickly." Officer Carrington testified that the patdown and the removal of the object occurred in no "more than a couple of seconds." The defendant Williams testified that the whole incident took place in perhaps ten to twelve seconds.

realized the item in the defendant's pocket was not a weapon and posed no threat.

In response, the government contends that the initial stop of Charles Williams by Officer Carrington was not a *de facto* arrest, but rather a stop permitted under the doctrine of *Terry v. Ohio*, 392 U.S. 1 (1968), based upon a reasonable articulable suspicion that Charles Williams was armed and involved in criminal activity. Furthermore, the government contends that Carrington was justified in seizing the object from Charles Williams' pocket under the "plain feel" doctrine set forth in *Minnesota v. Dickerson*, 508 U.S. 366, 375-76 (1993), because during the patdown Carrington could feel by the contour of the plastic bag that it was a plastic baggie containing crack cocaine.[4]

A. De Facto Arrest

The government does not contend that the search of the defendant, Charles Williams, was a search incident to an arrest. *Illinois v. Gates*, 462 U.S. 213 (1983). The government does contend that the search was within the parameters of the "plain feel" doctrine of *Minnesota v. Dickerson*,

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[4]The government has alternatively argued that even if the patdown search and discovery of the cocaine package was not permissible under *Terry v. Ohio* and *Minnesota v. Dickerson* the doctrine of inevitable discovery would still apply. Under the "inevitable discovery" doctrine, improperly seized evidence may nevertheless be admitted "[i]f the prosecution can establish by a preponderance of the evidence that the information ultimately would have been discovered by lawful means." *Nix v. Williams*, 467 U.S. 431, 444 (1984). The government contends that there was clear probable cause to arrest Randall Williams and the search of the vehicle incident to *his* arrest did reveal crack cocaine. The government argues that under principles set forth in *Maryland v. Pringle*, 540 U.S. 366, 372 (2003), the cocaine found in the car would provide probable cause for the immediate arrest of all occupants of the car. Thus, the government contends that there would still have been a lawful search of Charles Williams incident to this lawful arrest. As the facts of this case are distinguishable from the facts in *Maryland v. Pringle*, this Court questions the government's expansive interpretation of that case. However, in light of this Court's ruling on the validity of a *Terry v. Ohio* stop and the "plain feel" doctrine of *Minnesota v. Dickerson*, this Court need not address the alternative "inevitable discovery" theory.

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Additionally, any intent to arrest on Carrington's part by itself would not escalate the encounter to a level of 'unreasonableness' prohibited by the Fourth Amendment. In fact, Officer Carrington's subjective intent or state of mind upon entering the Burger King is not at issue. *Whren v. United States*, 517 U.S. 806, 812-13 (1996). As the Supreme Court recently pointed out in *Devenpeck v. Alford*, __ U.S. __, 125 S. Ct. 588, 594 (2004):

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Officer Carrington was justified in initiating the patdown of the defendant in this instance. Carrington knew that a task force with which he was working was conducting a planned controlled purchase of crack cocaine by a confidential informant from Randall Williams, that the controlled purchase was to take place in the Burger King at which the police were waiting, and that Randall Williams had sold the confidential informant crack cocaine on several prior occasions. Additionally, unlike the prior drug deals, the deal set to take place on May 11, 2005 was not for the previous amount of one ounce, but rather the substantially larger amount of four and one-half ounces. Further, although Carrington was not familiar with the identity of Randall Williams, he was alerted to the arrival of his car at the Burger King. At that point, Carrington observed two individuals exit that vehicle, similarly dressed, walking apprehensively across the parking lot and into the Burger King. In the training and experience he garnered from conducting such operations, Carrington knew that drug dealers often carry weapons and travel in pairs, as a means of enforcement and protection. Thus, as the first officer inside the Burger King, Carrington's instinctive response to briefly detain and patdown the suspect in order to ensure both the protection of the general public inside and the officers entering behind him was

unequivocally justified by a reasonable articulable suspicion that Charles Williams was armed.[5] Officer Carrington in making an investigative stop is permitted to take such steps as are "reasonably necessary to protect [his] personal safety and to maintain the status quo during the course of the stop." *United States v. Hensley*, 469 U.S. 221, 235 (1985).

Having concluded that Carrington's initial stop of Charles Williams was justified under *Terry v. Ohio* as an investigative stop, the next inquiry is whether it was reasonably related in its scope to the circumstances justifying the intrusion. *Terry*, 392 U.S. at 20. As noted above, Carrington's actions were reasonably related to the circumstances justifying the intrusion, specifically the protection of members of the public, himself, and other police officers. The alleged use of the loud voice by Officer Carrington was uncorroborated by anyone other than the defendant himself. Both witnesses from the

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The "collective knowledge" doctrine, as used in the cases cited by the defendant, imputes the knowledge of officers knowing the facts and history of a case which justify a 'search' to the officers actually conducting the search, in order to fend off any subsequent attack on the search's validity as being without probable cause. *See United States v. Hagerman*, 2003 U.S. Dist. LEXIS 9051 (W.D. Va. March 26, 2003); *United States v. Laughman*, 618 F.2d 1067 (4th Cir. 1980). The 'collective knowledge' doctrine protects an otherwise valid arrest from attack because of a lack of firsthand knowledge of the particular facts justifying the search on the part of the officers actually conducting that search. Furthermore, *Whiteley v. Warden*, 401 U.S. 560 (1971), a case briefed at length by the defense, is a case concerning reliance on a search warrant unsupported by probable cause, and an issuing officer's attempt to remove the taint of the warrant by giving it to an unknowing field officer. In the instant case, Agent Schmidt was not attempting to have Officer Carrington search Charles Williams. Rather, Officer Carrington, as the first one in the restaurant and acting on the facts known to him at the time, had independent objective cause to briefly detain the defendant. *See* discussion *supra*; *see* also *Whren*, 517 U.S. at 813.

Burger King testified under oath as to the quiet and polite conduct of the police officers at the scene. Further, a loud voice, under the circumstances, was justifiable.

Witness testimony at the motion hearing did not establish that the handcuffs were applied before Williams' arrest. Officer Carrington and the defendant, Charles Williams, both testified that the handcuffs were placed on the defendant after the patdown search and the removal of cocaine from the defendant's pocket. However, were that not the case, such restraint would not have automatically elevated the detention into an arrest. *United States v. Crittendon*, 883 F.2d 326, 329 (4th Cir. 1989)("Brief, even if complete, deprivations of a suspect's liberty do not convert a stop and frisk into an arrest so long as the methods of restraint used are reasonable to the circumstances.").

Finally, it should be noted that the entire sequence of events with respect to Charles Williams' brief detention and eventual arrest lasted a matter of seconds. The defendant, Charles Williams, testified that the entire sequence took approximately ten to twelve seconds. A court assessing the duration of a stop "should take care to consider whether the police are acting in a swiftly developing situation, and in such cases the court should not indulge in unrealistic second-guessing." *United States v. Sharpe*, 470 U.S. 675, 686 (1985). Thus, this Court finds Officer Carrington's actions were reasonably related in scope to the circumstances justifying the initial stop. Carrington was clearly justified in conducting the patdown search at the scene of a monitored drug transaction involving a confidential informant.

C. The Removal of the Object

Given Carrington's justification under *Terry* and progeny to conduct a brief investigatory stop

based upon reasonable articulable suspicion, he was also entitled "to conduct a limited search of [Charles Williams's] outer clothing to discover any weapons." *Raymond*, 152 F.3d at 312. If, in the course of that patdown for weapons, Officer Carrington discovered contraband through "plain feel" whose "contour or mass [made] its identity immediately apparent," then he was justified in seizing that item, provided he had probable cause to believe the item was contraband by the time he realized it was not a weapon. *Dickerson*, 508 U.S. at 375-76, 378-79; *United States v. Swann*, 149 F.3d 271, 275 n. 3 (4th Cir. 1998). However, if the contraband was discovered only after "squeezing, sliding, and otherwise manipulating the contents of [Charles Williams'] pocket," Carrington's seizure of the contraband was had in contravention of Williams' Fourth Amendment rights, and should be suppressed. *Dickerson*, 508 U.S. at 378. The distinction between the two is, admittedly, "exceedingly fine." *United States v. Ramirez*, 2003 U.S. Dist. LEXIS 1669, at *22 (S.D.N.Y. Jan. 30, 2003).

In the case at bar, Officer Carrington testified that while in the process of a patdown for weapons he felt a plastic bag in Charles Williams' front shorts pocket, containing a chunky substance with both hard and soft qualities. Further, he testified that based upon his numerous experiences as an officer arresting persons secreting narcotics, he was "pretty comfortable" that the suspect in this instance was carrying cocaine within the plastic bag. However, Officer Carrington further testified that it took him "more than a couple of seconds" to conclude the substance was drugs. The defendant contends this last point puts the case squarely within the bounds of *Minnesota v. Dickerson*. This Court disagrees.

"No doubt a metaphysician could draw distinctions between "immediately" knowing something,

[and] knowing it after a [couple of seconds]." *Ramirez,* 2003 U.S. Dist. LEXIS at *24. However, this Court need not diverge into metaphysics to decide the issue before it. On the contrary, after determining whether the object's "incriminating character [was] immediately apparent," *Dickerson*, 508 U.S. at 375, this Court need only inquire whether or not Officer Carrington had probable cause to believe the object was contraband by the time he realized it was not a weapon. *Jones*, 303 F. Supp. 2d at 706.

The Court concludes the object's incriminating character was immediately apparent to Officer Carrington during the patdown. Based upon prior experiences arresting suspects who secreted drugs in various containers upon their person, coming across a plastic bag holding a loose "hard and soft" substance inside would, and did immediately indicate to Carrington the incriminating character of the item in this instance. That is not to say Carrington was 100% sure it was "cocaine" at that very moment, but absolute certainty was not required. *Jones*, 303 F. Supp. 2d at 706.

Additionally, this Court finds at that same moment under the totality of the circum-stances, Officer Carrington had probable cause to believe the item was contraband. Officer Carrington is a veteran officer with substantial knowledge of the drug trade. He has been a member of the police force for nearly seventeen years, attended a six month narcotics program and an advanced narcotics school for additional training, participates in over fifty drug investigations each year, and was assigned to DEA Task Force 51 in this instance to help with the drug investigation at the Burger King. Further, Officer Carrington observed the defendant in this instance walking furtively out of the suspect vehicle and into the Burger King where the monitored drug transaction was to take place. At the time of the stop,

Carrington was unsure if the person he was frisking was, in fact, Randall Williams. Additionally, as he testified, Carrington was aware that drug dealers often work in pairs. Lastly, "the object's shape, size, and packaging were consistent with a lump of crack-cocaine or another controlled dangerous substance." *Jones*, 303 F. Supp. 2d at 706. Thus, under the totality of the circumstances, the moment he recognized the item's incriminating character and was "pretty comfortable" it was narcotics is the same moment in this Court's view that Carrington had probable cause to believe the item was contraband. Probable cause "merely requires that the facts available to the officer would warrant a man of reasonable caution in the belief that certain items may be contraband." *Texas v. Brown*, 460 U.S. 730, 742 (1983) (plurality opnion). As such, his subsequent removal and seizure of the item was justified under the "plain feel" doctrine of *Minnesota v. Dickerson*.

In light of this Court's conclusion that Carrington had probable cause to seize the item the same moment he recognized its incriminating character, it becomes immaterial whether he took "more than a couple of seconds" (or ten to twelve seconds as the defendant testified) to increase his confidence that the baggie contained contraband. For such action was merely a means to further verify in the brief span of a couple of seconds "what he understood from the first." *Ramirez*, 203 U.S. Dist. LEXIS at *24, namely, that the item in Charles Williams' pocket was very likely cocaine. However, assuming *arguendo* that this Court found probable cause to be lacking at that initial moment, relevant case law interpreting *Minnesota v. Dickerson* further supports a finding of reasonableness in this instance, despite the passing of a few seconds. *Raymond*, 152 F.3d at 313 (patdown search took "five seconds"); *Ramirez*, 2003 U.S. Dist. LEXIS at *24 (squeezed and rolled item "for a second or so"); *United States v. Rogers*, 129 F.3d 76 (1997) (manipulated item for a "few seconds"). Carrington

conducted an appropriate patdown search in light of the totality of the circumstances. He had probable cause to believe that the object he felt was a package of cocaine. Accordingly, the seizure was lawful.

III. CONCLUSION

For the reasons stated herein, the motion of the Defendant, Charles Williams, to suppress the evidence seized from his person on May 11, 2005 is DENIED.

Date: August 9, 2005

/s/
Richard D. Bennett
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

UNITED STATES OF AMERICA	:	
	:	
v.	:	Criminal No. RDB-05-0240
	:	
RANDALL L. WILLIAMS, JR.,	:	
	:	
CHARLES Z. WILLIAMS	:	
	:	

MEMORANDUM OPINION

Now pending before this Court is the motion to suppress of the defendant Charles Z. Williams (Paper No. 14). The Court heard testimony and argument on Williams' motion on July 21, 2005 and July 26, 2005. For the reasons that follow, the Court will by separate Order DENY this motion to suppress.

I. BACKGROUND

From January 25, 2005 to May 11, 2005, agents of the Drug Enforcement Administration ("DEA") and Baltimore County police officers took part in an investigation of narcotics trafficking by the Co-Defendant Randall L. Williams, Jr. ("Randall Williams"). The investigation included controlled purchases of crack cocaine from Randall Williams by a confidential informant ("CI") which were monitored and observed by law enforcement officials of the Joint Task Force on February 22, 2005 and April 19, 2005. On each occasion Randall Williams arrived at the scene of the transaction in a white Chevrolet Corsica.

On May 11, 2005 the CI arranged another controlled purchase of approximately four and one-half ounces of crack cocaine. This amount was substantially larger than the previous purchases from

Randall Williams of approximately one ounce each. Consistent with the earlier controlled purchases, the transaction was scheduled to occur in the late afternoon in the parking lot of the Royal Farms Store on Eastern Avenue in Baltimore City. However, the meeting was postponed by Randall Williams until 7 P.M. that evening. At approximately 6:30 P.M., the law enforcement agents set up surveillance of the Royal Farms parking lot, as the CI arrived at the store and parked. Soon thereafter, the CI spoke with Randall Williams over the telephone and was told he was running late and would not arrive until 7:30 P.M.. The CI relayed this information to the agents at the scene. Additionally, the CI informed the agents that the location of the sale had changed to the Burger King restaurant next door and immediately adjacent to the Royal Farms.

At approximately 7:10 P.M. Randall Williams was observed pulling into the Burger King parking lot in the same white Chevrolet Corsica used in the prior controlled drug transactions. At that point, Randall Williams and a second unidentified male exited from the vehicle. The second black male was later identified to be the defendant Charles Williams, Randall Williams' brother. Agents then entered the Burger King parking lot and observed the two men walking towards the restaurant acting in a nervous manner by turning their heads from side to side in order to scan their surroundings.

Baltimore County Police Officer Randall Carrington ("Carrington"), who was participating in the narcotics investigation of Randall Williams for the first time that day, had been briefed by task force agents earlier as to the particulars of the case. Carrington was situated in close proximity to the Burger King parking lot, and the spot where the suspect's car arrived. He observed two similarly dressed individuals walking towards the entrance to the Burger King. He did not know which of the two individuals was Randall Williams. Officer Carrington also observed the two men looking cautiously at

their surroundings as they crossed the parking lot and entered the Burger King.

Officer Carrington was the first law enforcement official to enter the Burger King. There were approximately ten to fifteen customers in that restaurant when Officer Carrington entered.[1] Upon entry, he observed one of the two men he had previously observed standing in or near the food line. In light of the fact that a drug transaction was expected to take place, and based upon his experience with respect to the possibility of guns being used in connection with drug transactions, Carrington ordered the individual to "get down on the ground," and conducted a patdown search. This individual was, in fact, the defendant Charles Williams, who immediately assumed a face-down prone position on the floor. Carrington approached him, and lifted him off the floor in order to pat him down in a search for weapons. During this patdown, Carrington determined that Charles Williams did not possess a weapon, but Carrington felt a plastic bag containing a large lump that was both hard and soft in Williams' right front pocket. Based upon his years of experience, the feel of the baggie indicated to Carrington that the package contained cocaine.[2] He extracted the baggie from Williams' pocket because he believed that he had found drugs. The object proved to be an approximately four and one-half ounce chunk of crack cocaine wrapped in a plastic bag. In addition to the packaged cocaine, $627.00 was also found in the defendant's pocket and was seized by Carrington. The patdown and

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[1]Burger King employee Anthony Graves testified at the suppression hearing that there were ten to fifteen customers in the restaurant. A second Burger King employee Gwendis Phillips testified that there were approximately ten customers standing in line and perhaps an additional nine customers sitting down.

[2]Officer Carrington provided testimony of his experience with the packaging of cocaine and his experience in prior cocaine related arrests.

the removal of the plastic baggie and cash occurred within a matter of seconds.[3] Based upon the cocaine discovered on Charles Williams' person, he was placed under arrest.

Agents more familiar with the case, in particular, DEA Agent-in-Charge Joel Schmidt ("Schmidt"), who came into the Burger King shortly after Carrington, immediately recognized the individual in Carrington's control was not Randall Williams and therefore proceeded to search the Burger King for the suspect. Randall Williams was quickly found and arrested in the bathroom of the Burger King. Agents then searched the vehicle in which the two men had arrived and found approximately three additional ounces of cocaine in the back seat in a camouflage cap and black knit hat.

II. ANALYSIS

The defendant, Charles Z. Williams, moves to suppress the crack cocaine found on his person by Officer Carrington, arguing that the encounter between Officer Carrington and the defendant amounted to a *de facto* arrest without probable cause, and that the contraband discovered as a search incident to that arrest should thereby be suppressed. Alternatively, Williams argues that, even if there was not a *de facto* arrest, the initial stop and patdown conducted by Officer Carrington was not justified by a reasonable articulable suspicion that he was engaged in criminal activity. Lastly, the defendant argues that even if a reasonable articulable suspicion existed to justify a brief stop, the allowable scope of any permissible 'stop and frisk' was exceeded by Officer Carrington once he

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[3]The Burger King employee Gwendis Phillips testified that "everything happened quickly." Officer Carrington testified that the patdown and the removal of the object occurred in no "more than a couple of seconds." The defendant Williams testified that the whole incident took place in perhaps ten to twelve seconds.

realized the item in the defendant's pocket was not a weapon and posed no threat.

In response, the government contends that the initial stop of Charles Williams by Officer Carrington was not a *de facto* arrest, but rather a stop permitted under the doctrine of *Terry v. Ohio*, 392 U.S. 1 (1968), based upon a reasonable articulable suspicion that Charles Williams was armed and involved in criminal activity. Furthermore, the government contends that Carrington was justified in seizing the object from Charles Williams' pocket under the "plain feel" doctrine set forth in *Minnesota v. Dickerson*, 508 U.S. 366, 375-76 (1993), because during the patdown Carrington could feel by the contour of the plastic bag that it was a plastic baggie containing crack cocaine.[4]

A. De Facto Arrest

The government does not contend that the search of the defendant, Charles Williams, was a search incident to an arrest. *Illinois v. Gates*, 462 U.S. 213 (1983). The government does contend that the search was within the parameters of the "plain feel" doctrine of *Minnesota v. Dickerson*,

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[4]The government has alternatively argued that even if the patdown search and discovery of the cocaine package was not permissible under *Terry v. Ohio* and *Minnesota v. Dickerson* the doctrine of inevitable discovery would still apply. Under the "inevitable discovery" doctrine, improperly seized evidence may nevertheless be admitted "[i]f the prosecution can establish by a preponderance of the evidence that the information ultimately would have been discovered by lawful means." *Nix v. Williams*, 467 U.S. 431, 444 (1984). The government contends that there was clear probable cause to arrest Randall Williams and the search of the vehicle incident to *his* arrest did reveal crack cocaine. The government argues that under principles set forth in *Maryland v. Pringle*, 540 U.S. 366, 372 (2003), the cocaine found in the car would provide probable cause for the immediate arrest of all occupants of the car. Thus, the government contends that there would still have been a lawful search of Charles Williams incident to this lawful arrest. As the facts of this case are distinguishable from the facts in *Maryland v. Pringle*, this Court questions the government's expansive interpretation of that case. However, in light of this Court's ruling on the validity of a *Terry v. Ohio* stop and the "plain feel" doctrine of *Minnesota v. Dickerson*, this Court need not address the alternative "inevitable discovery" theory.

incident to a patdown search under the doctrine of *Terry v. Ohio*. However, the defendant contends that his encounter with Officer Carrington amounted to an immediate *de facto* arrest. In support of this argument, the defendant points to several facts. Specifically, he focuses on testimony of Officer Carrington and Special Agent Schmidt of the DEA that it was their intention to arrest Randall Williams in the Burger King. The defendant places great emphasis on the fact that Officer Carrington was unaware of the identity of the suspect he was approaching inside the Burger King, and therefore suggests that Carrington must have inadvertently actualized an intent to arrest Randall Williams upon Charles Williams. The defendant further points to the factual discrepancies between Agent Schmidt's subsequent affidavit, his completion of a DEA-6 form, Officer Carrington's testimony, the alleged loud voice used by Carrington to notify the defendant to "get down on the ground," and alleges disputed fact as to when the handcuffs were applied to him.

First, the defense places great emphasis on discrepancies in the record between Agent Schmidt's affidavit, DEA-6 reports, and Officer Carrington's testimony. Specifically, Agent Schmidt in his report classified Carrington's search of the defendant, Charles Williams, as a search incident to arrest, instead of a patdown search under *Terry v. Ohio*. However, as the defense acknowledges in its supplemental memorandum in support of the motion to suppress, "Special Agent Schmidt testified that he paid little attention to Detective Carrington and his interactions with the unidentified individual." (*See* Defendant's Supplemental Memorandum of Law in Support of the Motion to Suppress P.5.) Further, Detective Carrington testified that he had no conversation with Agent Schmidt at the Burger King on May 11, 2005 and, when the two spoke the next day, they did not specifically discuss whether Officer Carrington's contraband discovery was the result of a search incident to arrest or a search justified

under *Terry v. Ohio*. Therefore, crediting Officer Carrington's testimony, this Court is convinced Agent Schmidt's subsequent classification of the encounter and contraband discovery as a search incident to arrest, instead of a *Terry* 'stop and frisk,' was nothing more than harmless clerical error.

Second, this Court finds that while it was the agents' intent to arrest Randall Williams once inside the Burger King, there is no evidence that it was Officer Carrington's intent to arrest the individual standing in line (and, later determined to be Charles Williams) upon entering the Burger King. Officer Carrington testified at the motion hearing that it was not his intention to arrest the unidentified individual once inside the Burger King. Further, given he was new to the investigation, as the first officer in the restaurant he was unaware which of the two individuals he saw exiting the vehicle and entering the establishment was Randall Williams. Thus, he testified, and the Court finds, that it was not his intent to arrest the individual in line, but rather to gain control over a potentially dangerous situation with members of the public in close proximity.

Additionally, any intent to arrest on Carrington's part by itself would not escalate the encounter to a level of 'unreasonableness' prohibited by the Fourth Amendment. In fact, Officer Carrington's subjective intent or state of mind upon entering the Burger King is not at issue. *Whren v. United States*, 517 U.S. 806, 812-13 (1996). As the Supreme Court recently pointed out in *Devenpeck v. Alford*, __ U.S. __, 125 S. Ct. 588, 594 (2004):

> [A]s we have repeatedly explained, "the fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action." *Whren*, 517 U.S. at 813 (quoting *Scott v. United States*, 436 U.S. 128, 138, 56 L. Ed. 2d 168, 98 S. Ct. 1717 (1978)). "[T]he Fourth Amendment's concern with 'reasonableness' allows certain actions to be taken in certain circumstances,

> whatever the subjective intent." *Whren* at 814. "[E]venhanded law enforcement is best achieved by the application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer." *Horton v. California*, 496 U.S. 128, 138, 110 L. Ed. 2d 112, 110 S. Ct. 2301 (1990).

Therefore, the Court's only inquiry in this regard need be an evaluation of the factual circumstances surrounding the encounter, and a determination of objective reasonableness. Specifically, the Court need only evaluate whether the officer's actions were justified by a reasonable articulable suspicion, and reasonably related in scope to the circumstances justifying the intrusion. *Terry*, 392 U.S. at 20.

B. The Initial Pat-down

If, under the totality of the circumstances, a police officer has a reasonable articulable suspicion that a person is armed and involved in criminal activity, that officer may conduct a patdown search of that individual without a warrant in order to quell any threat of physical harm. *United States v. Jones*, 303 F. Supp. 2d 702, 704-705 (D. Md. 2004) (citing *United States v. Raymond*, 152 F.3d 309, 312 (4th Cir. 1998)). Thus, the question before this Court is whether or not Officer Carrington, who carried out the investigative stop, had a reasonable articulable suspicion that Charles Williams was armed and involved in criminal activity.

Defendants' reliance on *United States v. Di Re*, 332 U.S. 581 (1948) and *Ybarra v. Illinois*, 444 U.S. 85 (1979) to show a lack of reasonable articulable suspicion is misplaced. First, *Di Re* addressed the issue of probable cause, and was decided some twenty years before *Terry v. Ohio* and the birth of reasonable articulable suspicion. The government did not argue that Officer Carrington's actions were justified under a theory of probable cause, but rather reasonable articulable suspicion (a

lower standard). Furthermore, *Di Re* is distinguishable on its facts. Second, the Supreme Court in *Ybarra* found the search of a bar patron present during the execution of a search warrant unlawful because the *initial* patdown was "unsupported by a reasonable belief that the suspect was armed and presently dangerous." *Id.* at 92-93. The warrantless search of a bar patron is clearly distinguishable from the search of an individual arriving at the scene of a monitored drug transaction involving a confidential informant.

Officer Carrington was justified in initiating the patdown of the defendant in this instance. Carrington knew that a task force with which he was working was conducting a planned controlled purchase of crack cocaine by a confidential informant from Randall Williams, that the controlled purchase was to take place in the Burger King at which the police were waiting, and that Randall Williams had sold the confidential informant crack cocaine on several prior occasions. Additionally, unlike the prior drug deals, the deal set to take place on May 11, 2005 was not for the previous amount of one ounce, but rather the substantially larger amount of four and one-half ounces. Further, although Carrington was not familiar with the identity of Randall Williams, he was alerted to the arrival of his car at the Burger King. At that point, Carrington observed two individuals exit that vehicle, similarly dressed, walking apprehensively across the parking lot and into the Burger King. In the training and experience he garnered from conducting such operations, Carrington knew that drug dealers often carry weapons and travel in pairs, as a means of enforcement and protection. Thus, as the first officer inside the Burger King, Carrington's instinctive response to briefly detain and patdown the suspect in order to ensure both the protection of the general public inside and the officers entering behind him was

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Having concluded that Carrington's initial stop of Charles Williams was justified under *Terry v. Ohio* as an investigative stop, the next inquiry is whether it was reasonably related in its scope to the circumstances justifying the intrusion. *Terry*, 392 U.S. at 20. As noted above, Carrington's actions were reasonably related to the circumstances justifying the intrusion, specifically the protection of members of the public, himself, and other police officers. The alleged use of the loud voice by Officer Carrington was uncorroborated by anyone other than the defendant himself. Both witnesses from the

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Finally, it should be noted that the entire sequence of events with respect to Charles Williams' brief detention and eventual arrest lasted a matter of seconds. The defendant, Charles Williams, testified that the entire sequence took approximately ten to twelve seconds. A court assessing the duration of a stop "should take care to consider whether the police are acting in a swiftly developing situation, and in such cases the court should not indulge in unrealistic second-guessing." *United States v. Sharpe*, 470 U.S. 675, 686 (1985). Thus, this Court finds Officer Carrington's actions were reasonably related in scope to the circumstances justifying the initial stop. Carrington was clearly justified in conducting the patdown search at the scene of a monitored drug transaction involving a confidential informant.

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In the case at bar, Officer Carrington testified that while in the process of a patdown for weapons he felt a plastic bag in Charles Williams' front shorts pocket, containing a chunky substance with both hard and soft qualities. Further, he testified that based upon his numerous experiences as an officer arresting persons secreting narcotics, he was "pretty comfortable" that the suspect in this instance was carrying cocaine within the plastic bag. However, Officer Carrington further testified that it took him "more than a couple of seconds" to conclude the substance was drugs. The defendant contends this last point puts the case squarely within the bounds of *Minnesota v. Dickerson*. This Court disagrees.

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[and] knowing it after a [couple of seconds]." *Ramirez,* 2003 U.S. Dist. LEXIS at *24. However, this Court need not diverge into metaphysics to decide the issue before it. On the contrary, after determining whether the object's "incriminating character [was] immediately apparent," *Dickerson*, 508 U.S. at 375, this Court need only inquire whether or not Officer Carrington had probable cause to believe the object was contraband by the time he realized it was not a weapon. *Jones*, 303 F. Supp. 2d at 706.

The Court concludes the object's incriminating character was immediately apparent to Officer Carrington during the patdown. Based upon prior experiences arresting suspects who secreted drugs in various containers upon their person, coming across a plastic bag holding a loose "hard and soft" substance inside would, and did immediately indicate to Carrington the incriminating character of the item in this instance. That is not to say Carrington was 100% sure it was "cocaine" at that very moment, but absolute certainty was not required. *Jones*, 303 F. Supp. 2d at 706.

Additionally, this Court finds at that same moment under the totality of the circum-stances, Officer Carrington had probable cause to believe the item was contraband. Officer Carrington is a veteran officer with substantial knowledge of the drug trade. He has been a member of the police force for nearly seventeen years, attended a six month narcotics program and an advanced narcotics school for additional training, participates in over fifty drug investigations each year, and was assigned to DEA Task Force 51 in this instance to help with the drug investigation at the Burger King. Further, Officer Carrington observed the defendant in this instance walking furtively out of the suspect vehicle and into the Burger King where the monitored drug transaction was to take place. At the time of the stop,

Carrington was unsure if the person he was frisking was, in fact, Randall Williams. Additionally, as he testified, Carrington was aware that drug dealers often work in pairs. Lastly, "the object's shape, size, and packaging were consistent with a lump of crack-cocaine or another controlled dangerous substance." *Jones*, 303 F. Supp. 2d at 706. Thus, under the totality of the circumstances, the moment he recognized the item's incriminating character and was "pretty comfortable" it was narcotics is the same moment in this Court's view that Carrington had probable cause to believe the item was contraband. Probable cause "merely requires that the facts available to the officer would warrant a man of reasonable caution in the belief that certain items may be contraband." *Texas v. Brown*, 460 U.S. 730, 742 (1983) (plurality opnion). As such, his subsequent removal and seizure of the item was justified under the "plain feel" doctrine of *Minnesota v. Dickerson*.

In light of this Court's conclusion that Carrington had probable cause to seize the item the same moment he recognized its incriminating character, it becomes immaterial whether he took "more than a couple of seconds" (or ten to twelve seconds as the defendant testified) to increase his confidence that the baggie contained contraband. For such action was merely a means to further verify in the brief span of a couple of seconds "what he understood from the first." *Ramirez*, 203 U.S. Dist. LEXIS at *24, namely, that the item in Charles Williams' pocket was very likely cocaine. However, assuming *arguendo* that this Court found probable cause to be lacking at that initial moment, relevant case law interpreting *Minnesota v. Dickerson* further supports a finding of reasonableness in this instance, despite the passing of a few seconds. *Raymond*, 152 F.3d at 313 (patdown search took "five seconds"); *Ramirez*, 2003 U.S. Dist. LEXIS at *24 (squeezed and rolled item "for a second or so"); *United States v. Rogers*, 129 F.3d 76 (1997) (manipulated item for a "few seconds"). Carrington

conducted an appropriate patdown search in light of the totality of the circumstances. He had probable cause to believe that the object he felt was a package of cocaine. Accordingly, the seizure was lawful.

III. CONCLUSION

For the reasons stated herein, the motion of the Defendant, Charles Williams, to suppress the evidence seized from his person on May 11, 2005 is DENIED.

Date: August 9, 2005

/s/
Richard D. Bennett
United States District Judge